

HB 1836 - H AMD 254

By Representative Ormsby

ADOPTED AS AMENDED 3/12/2009

1 Strike everything after the enacting clause and insert the
2 following:

3
4 "NEW SECTION. **Sec. 1.** A new section is added to chapter 39.12
5 RCW to read as follows:

6 (1) (a) The specifications for every contract to perform public
7 work estimated to cost over one million dollars must contain a
8 provision requiring the prime contractor, all subcontractors and their
9 subcontractors, and employers who are not required to register as
10 contractors under chapter 18.27 RCW to submit a certified list of any
11 off-site, prefabricated, nonstandard, project-specific items produced
12 under the terms of each respective contract and produced outside
13 Washington. The list must be submitted to the awarding agency and to
14 the department of labor and industries within ten days of delivery of
15 the item under the respective contract. The list must provide:

- 16 (i) A general description of the item;
- 17 (ii) The name and address of the contractor, subcontractor, or
18 employer;
- 19 (iii) The name and address of the contractor, subcontractor, or
20 employer that produced the item if other than the contractor,
21 subcontractor, or employer; and
- 22 (iv) The federal employer identification number of the contractor,
23 subcontractor, or employer that produced the item.

24 (b) If the awarding agency is aware of incidences of noncompliance
25 with the requirement to submit a list under (a) of this subsection,
26 the awarding agency must report such incidences to the department of
27 labor and industries. The failure to file a certified list required

1 under (a) of this subsection constitutes the failure to file a record
2 required to be filed under this chapter and subjects the contractor,
3 subcontractor, or employer to the penalties in RCW 39.12.050.

4 (2) (a) The specifications for every contract to perform public
5 work estimated to cost over one million dollars must contain a
6 provision requiring that all contracts entered into by the prime
7 contractor, all subcontractors and their subcontractors, and employers
8 who are not required to register as contractors under chapter 18.27
9 RCW for the production of off-site, prefabricated, nonstandard,
10 project-specific items which are produced outside Washington contain a
11 requirement for the production of certified copies of payroll records
12 as provided in subsection (3) of this section. The contract must also
13 state that the contractor or employer producing the items consents to
14 the jurisdiction of Washington for the enforcement of subsection (3)
15 of this section.

16 (b) If the director of the department of labor and industries
17 determines after a hearing under chapter 34.05 RCW that a prime
18 contractor, subcontractor, or employer has failed to comply with this
19 subsection, the prime contractor, subcontractor, or employer is
20 subject to a civil penalty of one thousand dollars for each failure to
21 comply. Civil penalties shall be deposited into the public works
22 administration account. The civil penalty does not apply to a
23 violation determined by the director to be an inadvertent error.

24 (3) Within ten days of receipt of a request by an interested
25 party, contractors, subcontractors, and employers producing the items
26 identified in subsection (2)(a) of this section outside Washington
27 must file with the awarding agency and the department of labor and
28 industries certified copies of payroll records. The payroll records
29 must contain the number of labor hours expended producing the items
30 and the hourly rate of wages paid to the workers in each trade or
31 occupation used in producing the items. If the awarding agency is
32 aware of incidences of noncompliance with the requirement to submit
33 payroll records under this subsection, the awarding agency must report
34 such incidences to the department of labor and industries. The failure

1 to produce the certified copies constitutes the failure to file a
2 record required to be filed under this chapter and subjects the
3 contractor, subcontractor, or employer to the penalties in RCW
4 39.12.050.

5 (4) This section does not apply to entities responsible for
6 supplying the materials to the manufacturers, fabricators, or
7 employers that will be used to complete, construct, or assemble the
8 items prior to their delivery to the public works site.

9 (5) (a) The required lists, payroll records, and certifications
10 under this section must be submitted on forms made available by the
11 department of labor and industries.

12 (b) The department of general administration shall develop
13 standard contract language to meet the requirements of subsections
14 (1)(a) and (2)(a) of this section and make the language available on
15 its website.

16 (6) For purposes of this section, "off-site, prefabricated,
17 nonstandard, project-specific items" means products or items that are:
18 (a) Made primarily of architectural or structural precast concrete,
19 fabricated steel, pipe and pipe systems, or sheet metal and sheet
20 metal duct work; (b) produced specifically for the public work and not
21 considered to be regularly available shelf items; (c) produced or
22 manufactured by labor expended to assemble or modify standard items;
23 and (d) produced at an off-site location.

24 (7) This section applies to contracts entered into on or after
25 September 1, 2009, and expires December 31, 2011.

26
27 NEW SECTION. **Sec. 2.** The expiration of section 1 of this act does
28 not affect any request or proceeding instituted prior to the
29 expiration of section 1 of this act."

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31 Correct the title.

EFFECT:

List.

- Limits the list requirement to contracts with an estimated cost over \$1,000,000.
- Provides that the list requirement applies to all contractors who contract for certain off-site prefabricated items and which items are produced outside Washington.
- Requires the list to provide a general description of the item, rather than identify the specific item produced, and to include the federal employer identification number rather than the unified business identifier number.
- Requires that the list be submitted within 10 days of delivery of the item, rather than before final acceptance of a project.
- Makes explicit that the failure to submit a certified list is a record filing violation under prevailing wage provisions. (Failure to file records under prevailing wage provisions subjects the contractor to a \$500 penalty and bars the contractor from bidding on a public works contract until the penalty has been paid in full. A second violation in a five year period bars the contractor from bidding on public works contracts for one year.)

Payroll records.

- Limits the payroll records requirement to contracts with an estimated cost over \$1,000,000.
- Provides that the requirement to provide certified payroll records applies only to persons producing the items outside Washington. (A rule addresses payroll records for work within Washington.)
- Provides that the failure to include the certified payroll requirement in a contract subjects the contractor to a \$1,000 civil penalty, rather than making the violation a record filing violation.
- Provides that persons producing the specified items outside Washington consent to Washington jurisdiction for purposes of the payroll records requirement.
- Makes explicit that failure to submit a payroll record is a record filing violation under prevailing wage provisions.

Other.

- Requires the Department of General Administration to develop standard contract language for the provisions and post the language on its website.
- Provides that the provisions apply to contracts entered into on or after September 1, 2009, and expire December 31, 2011.
- Adds a saving clause to provide that the expiration of the requirements does not affect any request or proceeding instituted before the expiration.

- Requires awarding agencies aware of incidences of noncompliance with the list and certified payroll records requirements to report the instances to the Department of Labor and Industries.
- Makes clarifying changes to reorganize a section and reference the chapter requiring contractor registration.

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